
**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

MELANIE SLAVENS, as Special
Administrator of the Estate of JAMES
SLAVENS,

Plaintiff,

v.

MILLARD COUNTY, et al,

Defendants.

**MEMORANDUM DECISION AND
ORDER DENYING DEFENDANTS'
MOTION TO DISMISS
(ECF No. 168)**

Case No. 2:11-CV-00568

Magistrate Judge Evelyn J. Furse

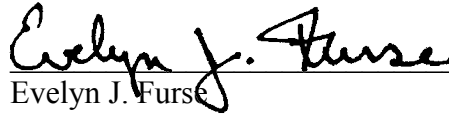
The Estate brings this action against Millard County alleging remaining causes of action under 42 U.S.C. section 1983 for violations of the Due Process Clause and breach of contract, including breach of the covenant of good faith and fair dealing. On September 20, 2012, the County moved this Court under Federal Rule of Civil Procedure 12(b)(6) to dismiss the Estate's claims for deprivation of constitutional rights because the Complaint fails to state a claim upon which the Court can grant relief. (ECF No. 168.)

The Court¹ read the Motion and Memorandum submitted by the County. Federal Rule of Civil Procedure 12(b)(6) requires "[a] motion asserting any of these defenses [including failure to state a claim] must be made before pleading if a responsive pleading is allowed." The Estate filed its Amended Complaint on August 19, 2013. The County filed a Motion for Judgment on the Pleadings on August 29, 2013, and filed an answer—a responsive pleading—on September 5, 2013. Therefore, the Court denies the County's Motion as untimely.

¹ The parties consented to the exercise of jurisdiction by the undersigned Magistrate Judge under 28 U.S.C. section 636(c). (ECF No. 8.)

DATED this 22nd day of September, 2013.

BY THE COURT:

A handwritten signature in black ink, reading "Evelyn J. Furse", is written over a horizontal line.

Evelyn J. Furse
United States Magistrate Judge